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FIRST DIVISION
FILED: JUNE 18, 2012

No. 1-09-2927

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 04 CR 17601
)	
HANNIBAL EASON,)	Honorable
)	Timothy J. Joyce,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hall and Karnezis concurred in the judgment.

ORDER

Held: The defendant's conviction is affirmed where it was supported by sufficient evidence and where the prosecutor's closing argument did not constitute plain error.

¶ 1 The defendant, Hannibal Eason, appeals from his jury trial convictions and subsequent sentence for first-degree murder and armed robbery based on his accountability for the actions of Billy Johnson. On appeal, the defendant argues that the State failed to prove him guilty beyond a reasonable doubt and that his conviction should be vacated due to improper closing argument from the State. For the reasons that follow, we affirm the judgment of the trial court.

¶ 2 At trial, the State's theory of the case was that the defendant and Johnson followed the victim, William Jones, off of a bus to rob him, and that Johnson fatally shot Jones during the encounter.

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Joyce O'Neil, a bystander on the bus, testified that, on the night of the shooting, she saw the defendant and two companions—later identified as Johnson and Allen Faulkner--near the victim at a bus stop. She stated that she boarded a bus with all four men. She recalled that the defendant, who appeared to have a hearing impairment, was "looking at" the victim while they waited at the bus stop and "staring at" the victim during the bus ride. O'Neil said that the defendant began "frantic[ally]" communicating in sign language with Johnson during the bus ride, while Faulkner talked to other passengers. She also recalled that one of the three men in the defendant's group had a bottle of alcohol sticking partly out of a pants pocket. O'Neil left the bus at the same time as the three men and the victim, and she saw the defendant and Johnson "walking fast" to follow the victim while Faulkner remained uninvolved. The victim, defendant, and the companion disappeared behind a white van, and O'Neil heard three gunshots.

¶ 3 Faulkner testified that the defendant and Johnson, among other people, gathered at his house on the day of the shooting, and, during the gathering, Johnson showed a gun to the group. After an initial denial, Faulkner agreed when confronted with his grand jury testimony that he had seen the defendant hold the gun during the gathering. Faulkner said that Johnson told the group he planned to commit a robbery. Faulker declined to participate, "so [Johnson] asked [the defendant] [']you want to go rob somebody.' They started talking." At that point, Faulkner said, he left the room.

¶ 4 Faulkner said that he, Johnson, and the defendant consumed vodka Johnson had brought in a gallon-jug and smoked marijuana before leaving Faulkner's home. Later in the night, the group of three men boarded a bus and saw the victim. At that point in the night, Faulkner said, the defendant was carrying the vodka bottle in a bag. Faulkner testified that, on the bus, "it looked like [Johnson] was messing with [the victim] and [he and the defendant] [were] trying to talk about robbing [him] and they [were] looking at him, making him afraid." Faulkner, however, focused his attention on talking to other passengers. When the four got off of the bus, Faulkner continued to talk to other people, but he saw Johnson and the defendant chase the victim. According to Faulkner, the defendant "whacked the guy" with the vodka bottle. The victim then put his hands up, a struggle

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ensued, and flashes of gunfire emanated from the area. The defendant and Johnson ran soon thereafter, and Faulker also ran when he saw that the victim had been killed. Faulker said that he saw the defendant and Johnson later at his house. Despite being confronted with his grand jury testimony stating the opposite, Faulker denied having seen the defendant go through the victim's clothes after the shooting. However, he confirmed that he saw the defendant with a cellular phone after the shooting. On cross-examination, Faulker stated that he did not recall telling police that the defendant was not involved in the shooting.

¶ 5 Cedric Currin, one of the people who gathered at Faulker's house prior to the shooting, recalled that Johnson was showing his gun to other people at the house. According to Currin, the defendant "really checked the gun out. He was really analyzing it." Currin later saw Johnson and the defendant talking to each other. Currin left the home wondering if he should alert others to the possible trouble.

¶ 6 Andrew Buchanan, another person at the gathering, testified that the defendant seemed impressed by the gun. Buchanan disagreed with his prior grand jury testimony, in which he said that the defendant reacted to the gun by saying "I feel like robbing somebody." He also denied knowing that the defendant and Johnson agreed to commit a robbery, despite so testifying before the grand jury. Buchanan, who was at Faulker's home after the incident as well, testified that the defendant returned with a cellular phone, but he said that the defendant did not explain where he obtained the phone. However, Buchanan was again impeached by his grand jury testimony that the defendant admitted taking the phone from the victim.

¶ 7 Troy Williams, a police officer who was off-duty at the time of the shooting, testified that he saw the defendant and Johnson following the victim and then heard three gunshots. Williams, however, did not see the actual shooting. The parties stipulated that, if called as a witness, a medical examiner would testify that he observed gunshot wounds on the victim's body, as well as lacerations on the front and back of the victim's head.

¶ 8 At the close of the State's case, the trial court denied the defendant's motion for a directed

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verdict, and the defense rested after presenting a stipulation that a police detective would testify that Faulkner told him the defendant was not involved in the shooting.

¶ 9 Following closing arguments and deliberation, the jury returned its verdict finding the defendant guilty of first-degree murder and aggravated battery. The defendant now timely appeals.

¶ 10 The defendant's first argument on appeal is that the State presented insufficient evidence to prove him guilty beyond a reasonable doubt of first-degree murder. When a defendant challenges the sufficiency of the evidence, the appellate court must determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304 (2004). In such a case, it is not the role of the reviewing court to retry the defendant. *People v. Sutherland*, 223 Ill.2d 187, 242, 860 N.E.2d 178 (2006). A criminal conviction will not be set aside on the grounds of insufficient evidence unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Brown*, 169 Ill. 2d 132, 152, 214 Ill.Dec. 433, 661 N.E.2d 287 (1996). In reviewing the evidence we will not substitute our judgment for that of the trier of fact. *Sutherland*, 223 Ill. 2d at 242; *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262 (2005). The determination of the weight to be given the witnesses' testimony, their credibility, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact. *Sutherland*, 223 Ill. 2d at 242.

¶ 11 The defendant does not dispute that Johnson murdered the victim in this case. Instead, he argues that the evidence was insufficient to show that he should be accountable for the murder as Johnson's accomplice. As the parties observe, a person is legally accountable for another's conduct when "[e]ither before or during the commission of an offense, and with the intent to promote or facilitate such commission, he solicits, aids, abets, agrees or attempts to aid, such other person in the planning or commission of the offense." 720 ILCS 5/5-2(c) (West 2004).

¶ 12 In his challenge to the evidence regarding his accountability, the defendant stresses that there

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was only equivocal testimony regarding (1) his conversations with Johnson before the murder, (2) his hitting the victim with a bottle, and (3) whether he took a cellular telephone from the victim. The defendant also points out that Faulkner, the only witness who claimed to have seen him strike the victim, had been consuming drugs and alcohol earlier in the day and was, therefore, an unreliable witness. All of these potential problems with the State's evidence, however, were presented to the jury, and they nonetheless deemed the evidence sufficient to establish that the defendant shared Johnson's intent and aided him in his crime. Viewed in the light most favorable to the State, the evidence supports the jury's conclusion. Faulkner's testimony was equivocal, but the jury could very reasonably have decided that his statements inculcating the defendant, who was apparently his friend, were credible. Further, Faulkner's recollection that the defendant struck the victim with a bottle was supported by evidence that the victim suffered lacerations on his head; the jury could reasonably have inferred that those lacerations were caused by impact with a bottle.

¶ 13 In addition, even if we were to agree with the defendant that the jury should have disbelieved all of the testimony regarding his conversations with Johnson, his battering the victim, and his taking the victim's phone, there would still be ample evidence to support his conviction. Aside from the evidence the defendant challenges, several witnesses offered clear and unchallenged testimony that, after the group got off of the bus, the defendant joined Johnson in pursuing the victim. This testimony alone demonstrates the defendant's participation in the attack on the victim, and it strongly supports the inference that he shared Johnson's criminal intent. For these reasons, viewing the evidence in the light most favorable to the State, we conclude that a reasonable jury could have found the defendant accountable for the victim's murder.

¶ 14 The defendant's second argument on appeal is that his conviction should be vacated because the prosecutor's improper closing argument deprived him of a fair trial. At the outset, we observe that the defendant raised this issue in his post-trial motion, but he failed to raise this objection during the trial itself. To preserve an issue for review, a defendant must both object at trial and raise the issue in a written post-trial motion. *People v. Bush*, 214 Ill. 2d 318, 332, 827 N.E.2d 455 (2005);

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People v. Enoch, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988). Consequently, the State argues that he has forfeited this claim on appeal. The defendant acknowledges his failure to raise a timely objection at trial, but he asks that we nonetheless consider his argument pursuant to the plain error rule. See Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999).

¶ 15 The plain-error rule "allows a reviewing court to reach a forfeited error affecting substantial rights in two circumstances." *People v. Herron*, 215 Ill. 2d 167, 178, 830 N.E.2d 467 (2005). "First, where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, a reviewing court may consider a forfeited error in order to preclude an argument that an innocent person was wrongly convicted." *Herron*, 215 Ill. 2d at 178. "Second, where the error is so serious that the defendant was denied a substantial right, and thus a fair trial, a reviewing court may consider a forfeited error in order to preserve the integrity of the judicial process." *Herron*, 215 Ill. 2d at 179. In either event, if there is no error, there can be no plain error. See *People v. Walker*, 232 Ill. 2d 113, 124-25, 902 N.E.2d 691 (2009). We therefore begin by determining whether the defendant has identified an error in the first place.

¶ 16 "The purpose of closing arguments is to give the parties a final opportunity to review with the jury the admitted evidence, discuss what it means, apply the applicable law to that evidence, and argue why the evidence and law compel a favorable verdict.'" *People v. Nicholas*, 218 Ill. 2d 104, 121, 842 N.E.2d 674 (2005) (quoting T. Mauet & W. Wolfson, *Trial Evidence* 439 (2d ed.2001)). Prosecutors are afforded wide latitude in closing argument, and a prosecutor's comments in closing argument will result in the reversal of a conviction only when they engender substantial prejudice against a defendant to the extent that it is impossible to determine whether the jury's verdict was caused by the comments or the evidence. *People v. Caffey*, 205 Ill. 2d 52, 131, 792 N.E.2d 1163 (2001). In closing, the prosecutor may comment on the evidence and any fair, reasonable inferences it yields, even if such inferences reflect negatively on the defendant. *Nicholas*, 218 Ill. 2d at 121.

¶ 17 A prosecutor may not, however, interject his personal opinions into a closing argument. See *People v. Jackson*, 391 Ill. App. 3d 11, 43, 908 N.E.2d 72 (2009). That said, "[f]or a prosecutor's

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closing argument to be improper, he must 'explicitly state that he is asserting his personal views.' " Jackson, 391 Ill. App. 3d at 43 (quoting *People v. Pope*, 284 Ill. App. 3d 695, 707, 672 N.E.2d 1321 (1996)). "Appellate courts are unwilling to infer that a prosecutor is injecting his personal opinion into an argument where the record does not unambiguously say so." Jackson, 391 Ill. App. 3d at 43. "Furthermore, a witness's credibility is the proper subject of closing argument if it is based on the evidence or reasonable inferences drawn from the evidence." Jackson, 391 Ill. App. 3d at 43.

¶ 18 The defendant objects to four passages from the State's closing argument. His first objection pertains to the following statement:

"[Currin], another witness *** with no real connection to either one of the defendants; although he does know both [Johnson] and [the defendant]. He told you [Johnson] brought the gun over to the house. Another thing he told you is that *** the defendant *** after [he] gets all animated after holding it, [he and Johnson] go and sit on the couch and have this conversation.

Again, what I think that evidence shows is there is a kind of *** a meeting of the minds on what they're going to do later on that night with that gun." (Emphasis added.)

¶ 19 In the defendant's view, by using the phrase "I think," the prosecutor improperly injected his personal opinion into closing argument. We disagree. As noted, we will not deem a closing argument improper on this ground unless a prosecutor explicitly states that he is asserting his personal views. In the context presented here, the phrase "I think" does not ask the jury to adopt the prosecutor's personal opinion of the case. Rather, it is a colloquial phrasing of an assertion the prosecutor laced throughout his argument: the idea that the evidence established that the defendant and Johnson reached an agreement to commit a robbery.

¶ 20 In the second portion of closing argument that draws an objection from the defendant, the prosecutor quotes grand jury testimony from a witness who saw Johnson and the defendant converse before appearing to agree on something, and the prosecutor then argues, "They're talking about setting up this robbery sometime later on in the evening, that's what's going on there." The defendant

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contends that this argument was improper because the actual grand jury testimony did not include the word "robbery." Thus, the defendant concludes, the prosecutor's statement was based wholly on his personal opinion, not on the evidence. We disagree. This statement from the prosecutor is a clear-cut example of the type of evidentiary inferences a prosecutor may, indeed should, present to a jury during closing argument.

¶ 21 The next argument the defendant objects to occurred as the prosecutor addressed the idea that the defendant and Johnson took property from the victim. The prosecutor argued,

"we know they took a phone. They took something because [Faulkner] saw *** the defendant actually take something from the victim. And we know from [other] testimony *** that it was a cell phone."

Regarding this argument, the defendant contends that the prosecutor's use of the phrase "we know" constitutes an assertion of personal opinion. We reject this contention for the same reason we reject the defendant's contention that the prosecutor should not have used the phrase "I think." That is, the prosecutor was very clearly arguing an inference based on the evidence adduced at trial. The defendant also asserts that the above-quoted argument is a "complete misstatement of the evidence," because "Faulkner never testified that he saw [the defendant] or Johnson take anything from the victim." We disagree. Although the defendant is technically correct that Faulkner did not testify that he saw the defendant take items from the victim, that testimony was strongly impeached by Faulkner's grand jury testimony to the opposite effect. The prosecutor could validly assert that this evidence supported the inference that Faulkner actually did see the defendant take something from the victim.

¶ 22 Finally, the defendant objects to part of the peroration of the State's closing argument:

"I'm telling you right now the evidence is more than just this poor innocent kid who gets sucked up by big bad Billy Johnson and his plan, because he helped plan it. He was there. He was the one egging [Johnson] on that bus; let's do this. Let's do this. *** He followed the victim out of that bus. He hit this young man on the head with a bottle and split

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open his head. This guy. He is every bit as responsible for this crime as [Johnson]. I don't care who pulled that trigger." (Emphasis added.)

¶ 23 The defendant contends that the prosecutor presented his personal opinion by using the phrase "I'm telling you right now." We reject this argument summarily. The prosecutor's choice of language emphasizes the evidentiary inferences the prosecutor was proposing, and it cannot fairly be interpreted as the prosecutor's asking the jury to accept his personal views in lieu of the evidence.

¶ 24 Based on the foregoing discussion, we conclude that the prosecutor made no improper remarks during closing argument. Accordingly, we conclude that the defendant has identified no error, and thus no plain error, arising out of closing argument.

¶ 25 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 26 Affirmed.